court. The learned plaintiff's counsel could not help to explain this deficiency. For that reason we find that the proceeds of the first defendant's alleged fraud could not be traced with certainty to the second defendant's account.

We feel that this fact was not drawn to the learned judge's attention, otherwise his decision would have been different.

For these reasons we allowed the appeal. The injunction granted on 22 March 1982 is dissolved. Costs to the appellant here and below. Deposit to be refunded to appellant.

Appeal allowed.

Solicitors: *Asbir, Hira Singh & Co; Azman Davidson & Co.*

Reported by *Prof Ahmad Ibrahim*

Inspector General of Police & Ors v Rajoo s/o Ramasamy

SUPREME COURT (KUALA LUMPUR) – CRIMINAL APPEAL NO 51 OF 1988
ABDUL HAMID LP, HASHIM YEOP A SANI CJ (MALAYA) AND AJAIB SINGH SCJ
28 JANUARY 1989

Constitutional Law – Habeas corpus – Application for – Respondent arrested and detained under Dangerous Drugs (Special Preventive Measures) Act 1985 – Report of inquiry officer – Discretion whether or not to call witnesses – Dangerous Drugs (Special Preventive Measures) Act 1985, ss 3 & 5

Criminal Law – Dangerous drugs – Arrest and detention on ground of association with trafficking activities – Report of inquiry officer – Whether necessary for inquiry officer to hold inquiry and call witnesses – Discretion of inquiry officer – Dangerous Drugs (Special Preventive Measures) Act 1985, ss 3 & 5

In this case the respondent had been arrested and detained for purpose of investigation under s 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act') on grounds that he had been and was associated with trafficking activities. The inquiry officer subsequently reported that he was satisfied that there were reasonable grounds for believing that the respondent had been associated with trafficking activities. The Deputy Minister of Home Affairs issued an order of detention under s 6 of the Act. The respondent applied for a writ of habeas corpus. The learned trial judge allowed the application on the ground that the detention of the respondent was illegal and therefore null and void as the Minister's order was issued without the proper report of the inquiry officer (see [1989] 1 MLJ 358). He held that it was imperative for the inquiry officer, upon receipt of the report submitted by the police officer, to hold an inquiry and for such purpose to call witnesses or procure such other evidence or require the production of documents. As the inquiry officer had failed to do so in this case, he held that the report submitted by the inquiry officer was not a valid report. The appellants appealed.

Held, allowing the appeal:

The learned judge erred in law in holding that it is imperative for the inquiry officer to invoke the powers contained in the relevant paragraphs to constitute a valid inquiry under sub-s (2) of s 5 of the Dangerous Drugs (Special Preventive Measures) Act 1985. The duty is that of the inquiry officer to be satisfied that there are reasonable grounds for believing that the person has been or is associated with trafficking activities. In carrying out his duty he has a discretion whether or not to call witnesses. It is not mandatory that he should invoke the powers contained in sub-s (3) of s 5 of the Act.

Legislation referred to

Dangerous Drugs (Special Preventive Measures) Act 1985 (Act 316) ss 3, 5, 6

Appeal from: Federal Territory Criminal Application No CR 54-10-88 (High Court, Kuala Lumpur)

Abu Talib bin Othman, Attorney General, Malaysia (*Mohamed Raus bin Shariff*, Deputy Public Prosecutor, with him) for the appellants.

Darshan Singh for the respondent.

Cur Adv Vult

Abdul Hamid LP (delivering the judgment of the court): This is an appeal by the Inspector General of Police, Minister of Home Affairs and Superintendent, Pusat Pemulihan Akhak against the decision of Anuar J sitting at Kuala Lumpur High Court in respect of an application for a writ of habeas corpus by the respondent, Rajoo s/o Ramasamy.

The learned judge allowed the application and ordered that the respondent be set at liberty. The appellants are dissatisfied with the decision. Hence the appeal.

The six grounds of appeal may be briefly summarized as follows: that the learned judge erred in law and in fact in holding that the detention of the respondent was illegal and null and void for reasons:

(a) that the Minister's order was issued without proper report by the inquiry officer and that the report submitted by the inquiry officer to the Minister was not a valid report;
(b) that the report was bad in law as the inquiry officer has failed to make proper inquiry, that is, he had failed:
  (i) to inquire whether there were reasonable grounds for believing that the respondent had been or was associated with any activity relating to or involving the trafficking of dangerous drugs (hereinafter described as 'the trafficking activities');
  (ii) to call witnesses or procure other evidence or require the production of any document,

to enable him to put a report.

In short the learned judge held that the Minister's order was a nullity on the ground that it was founded on a.

report by the inquiry officer who failed to call witnesses for the inquiry.

The facts are that the respondent was arrested and detained for purposes of investigation under s 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 (Act 316) ('the Act') on grounds that he had been and was associated with trafficking activities.

On 12 May 1988, Mohd Ghazli bin Haji Maulud, the principal assistant secretary of the Ministry of Home Affairs, whose responsibilities include the processing of case files relating to orders of detention under the Act, in his affidavit affirmed that he received the report of the inquiry officer to the Minister under s 5(2) of the Act in respect of the respondent wherein the inquiry officer stated that he was satisfied that there are reasonable grounds for believing that the respondent had been associated with trafficking activities. On 13 May 1988, the Deputy Minister of Home Affairs issued an order under s 6 of the Act.

The respondent applied to the High Court on 4 May 1988. The application was heard on 23 May 1988. The learned judge allowed it on one ground: that the detention of the respondent was illegal and therefore null and void as the Minister's order was issued without the proper report of the inquiry officer under s 5(2) of the Act. He was of the view that the report submitted by the inquiry officer to the Minister was not a valid report. According to the judge, it was bad in law as the inquiry officer had failed to make an inquiry as required under s 5(2) of the Act. The learned judge held that it was imperative for the inquiry officer, upon receipt of the report submitted by the police under s 3(3) of the Act, for purposes of such inquiry to call witnesses or procure such other evidence or require the production of any document.

In effect what the learned judge meant to say was that the inquiry officer had no option whatsoever in the matter, but was compelled by law to institute an inquiry by calling witnesses or procuring such other evidence. And since the inquiry officer had omitted to do that he could not therefore be said to have held an inquiry within the meaning of s 5(2) of the Act.

For convenience and ease of reference we set out hereunder the relevant parts of ss 3 and 5 of the Act:

> 3(1) Any police officer may, without warrant, arrest and detain, for the purpose of investigation, any person in respect of whom he has reason to believe there are grounds which could justify his detention under sub-s (1) of s 6.
>
> (2) Any person arrested and detained under this section may be detained in police custody for a period not exceeding sixty days without an order of detention having been made in respect of him under sub-s (1) of s 6:
>
> Provided that –
> (a) he shall not be detained for more than twenty four hours except with the authority of a police officer of or above the rank of Inspector;
> (b) he shall not be detained for more than forty eight hours except with the authority of a police officer of or above the rank of Assistant Superintendent of Police;
> (c) he shall not be detained for more than fourteen days unless a police officer of or above the rank of Deputy Superintendent has reported the circumstances of the arrest and detention to the Inspector General or to a police officer designated by the Inspector General in that behalf and the Inspector General or police officer so designated by him, as the case may be, shall forthwith report the same to the Minister.
>
> (3) The police officer making an investigation pertaining to a person arrested and detained under the section shall cause a copy of the complete report of the investigation to be submitted –
> (a) to an Inquiry Officer appointed under sub-s (1) of s 5; and
> (b) to the Minister,
> within such period as may be prescribed by the Minister by regulations made under this Act.
>
> (4) Any person detained under the powers conferred by this section shall be deemed to be in lawful custody, and may be detained in any prison, or in any police station, or in any other place authorized generally or specially by the Minister.
>
> 5(1) There shall be appointed by the Minister in writing such number of Inquiry Officers as may be necessary for the purpose of this Act:
> Provided that no police officer nor any person who is not legally qualified shall be appointed to be an Inquiry Officer.
>
> (2) Upon receiving the report under sub-s (3) of s 3, the Inquiry Officer shall inquire whether there are reasonable grounds for believing that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs.
>
> (3) An Inquiry Officer may, in his discretion, for the purpose of sub-s (2) –
> (a) require the attendance before him of a person detained under s 3;
> (b) procure and receive all such evidence, whether oral or in writing and whether the same be admissible or not under any written law for the time being in force relating to evidence or criminal procedure, which he may think necessary or desirable;
> (c) summon and examine witnesses on oath or affirmation, and may for those purposes administer any oath or affirmation;
> (d) require the production of any document or other thing in his opinion relevant to the case.
>
> (4) An Inquiry Officer shall submit his report in writing to the Minister within such period as may be prescribed by the Minister by regulations made under this Act.

On close scrutiny of these provisions, our view is that the learned judge had erred in law. These provisions clearly reveal, first, a police officer is empowered to arrest and detain without warrant for the purpose of investigation any person in respect of whom he has reason to believe there are grounds which would justify the detention

under s 6(1) of the Act (s 3(1) of the Act). Second, the Minister is empowered under s 6(1) to order detention and restriction of persons associated with trafficking activities where he is satisfied in the interest of public order that such person be detained. Sub-section (3) of s 3 directs the police officer making the investigation on the person arrested and detained to cause a copy of a complete report of the investigation to be submitted to an inquiry officer and to the Minister. It is upon receipt of such report that the inquiry officer is required to inquire whether there are reasonable grounds for believing that such person has or is associated with trafficking activities (s 5(2)). Basically the question is what constitutes an inquiry within the meaning of s 5(2) of the Act. The learned judge formed the view that it is imperative for the inquiry officer to apply the provisions contained in paras (a) to (d) of s 5(3) of the Act (hereinafter called 'the relevant paragraphs') and was therefore compelled to call witnesses for purposes of such inquiry.

Fundamentally, the learned judge came to that conclusion on the strength of the words 'shall inquire' appearing in s 5(2). But where he went wrong was that he completely omitted to consider the opening words of sub-s (3) which reads:

> An Inquiry Officer may, in his discretion, for the purpose of sub-s 2 –
> (a) require ...

These words were crucial to a proper interpretation of the meaning of 'inquiry' under s 5(2) of the Act.

If the learned judge had given due regard to these words, he would not, in our view, have come to the conclusion that he did. The language used in s 5 of the Act is crystal clear.

In our view, the words used in sub-s (2) read in the light of the whole of sub-s (3) make it abundantly clear that discretion rests with the inquiry officer. It is for the inquiry officer in a particular case to decide whether to exercise any of the powers. In other words it is for the inquiry officer to decide whether, for the purpose of the inquiry, to invoke any of the powers in the relevant paragraphs. Whether there is a need to do so would depend primarily on whether, having regard to the complete report submitted to him by the police investigating officer and on the materials submitted, he could be satisfied there were reasonable grounds to found his belief. If an inquiry officer is satisfied, after examining and considering the materials contained in the complete report, that there are reasonable grounds for believing that such person has been or is associated with trafficking activities, the need to call any witness or to procure any document does not arise. It is therefore only in cases where the inquiry officer, on the materials contained in the report submitted to him, is unable to satisfy himself that there are reasonable grounds to found his belief that such person is associated in trafficking activities, that the need to exercise his discretion arises. It would perhaps be proper to say that he ought to exercise the discretion if it is only by so doing that he can properly decide.

In our judgment, therefore, the learned judge erred in law in holding that it is imperative for the inquiry officer to invoke the powers contained in the relevant paragraphs to constitute a valid inquiry under sub-s (2) of s 5 of the Act. The duty is that of the inquiry officer to be satisfied that there are reasonable grounds for believing that the person has been or is associated with trafficking activities. In carrying out his duty he has a discretion whether or not to call witnesses. And it is not mandatory that he should invoke the powers contained in sub-s (3) of s 5 of the Act.

We feel that the learned judge imposed on the inquiry officer a heavier burden than that imposed on him by the legislature.

Accordingly, the order of the learned judge is set aside and substituted therefore with an order of dismissal of the application of the respondent.

Order accordingly.

Solicitors: *Darshan Singh & Co.*

Reported by *Prof Ahmad Ibrahim*

Minister for Home Affairs, Malaysia & Anor v Jamaluddin bin Othman

SUPREME COURT (KUALA LUMPUR) – CRIMINAL APPEAL NO 76 OF 1988
ABDUL HAMID LP, HASHIM YEOP A SANI CJ (MALAYA) AND AJAIB SINGH SCJ
30 JANUARY AND 24 FEBURARY 1989

Constitutional Law – Habeas corpus – Detention under Internal Security Act 1960 – Ground that detainee was involved in a plan or programme to propagate Christianity among Malays – Participation in meetings and seminars for the dissemination of Christianity among Malays – Conversion of Malays to Christianity – Actions of detainee not a threat to security of country – Freedom of religion – Internal Security Act 1960, s 8(1) – Federal Constitution, arts 11 & 149

In this case the respondent had been detained pursuant to an order made under s 8(1) of the Internal Security Act 1960. According to the affidavit of the Minister for Home Affairs, he was satisfied that the detention of the respondent was necessary with a view to preventing him from acting in a manner prejudicial to the security of Malaysia. The grounds for detention stated that the respondent was involved in a plan or programme to propagate Christianity among the Malays and it was also alleged that the activities of the respondent could give rise to tension and enmity between the Muslim community and the Christian community in Malaysia and could affect national security. The